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Attorneys for Defendant/Third Party Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

FAIRBANKS INVESTORS, INC.,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FARM SERVICE  
AGENCY,

Defendant.

UNITED STATES OF AMERICA,

Third Party Plaintiff,

vs.

LYALL BRASIER aka LYALL R.  
BRASIER, JR. aka LYALL RAYMOND  
BRASIER, JR. and JEANETTE BRASIER  
aka JEANETTE E. BRASIER aka  
JEANETTE ELAINE BRASIER, Husband  
and Wife; VANDER WEELE FARMS; and  
FAIRBANKS INVESTORS, INC.,

Third Party Defendants.

Case No. 4:05-cv-00023-RRB

STATUS REPORT

The Defendant/Third Party Plaintiff, United States of America, Farm Service Agency, (FSA) by Assistant United States Attorney Daniel R. Cooper, Jr., provides this status report to the court in response to the court's Minute Order From Chambers dated July 11, 2007 (Docket 30).

This case was originally a complaint for money damages involving certain personal property filed in the Superior Court for the State of Alaska by Fairbanks Investors, Inc. ("Fairbanks Investors"). It was removed to this court by the United States, who then filed a third party complaint against persons holding an interest of record in the personal property to foreclose those interests pursuant to security agreements it held on the property. The personalty which was the subject of the suit was used by Lyall and Jeannette Brasier (the Brasiers) in farming on land they owned near Delta Junction, Alaska. The USDA Farm Service Agency provided financing for the farming activities. The Brasiers put up the farmland and certain personal property used in the farming activities as collateral to secure the loan. The Brasiers executed security agreements, dated June 26, 1997, and March 21, 2001, covering the farm equipment, livestock, crops and irrigation equipment, copies of which were attached as Exhibits O and P to the complaint. The security agreements were perfected by a financing statement filed for record on July 11, 1997, as Instrument No. 433842, a continuation and amendment statement filed for record on July 8, 2002, as Instrument Nos. 2002-521143-8 and 2002-521144-0, Official Records of Alaska Department of Natural Resources.

Vander Weele Farms claimed an interest in some of the same collateral by reason of a lien recorded November 14, 2003, as Instrument No. 2003-552461-1, Official Records of Alaska

Department of Natural Resources Recorder's Office.

After defaulting on the loans to the USDA, the Brasiers sought protection under the Bankruptcy Act on January 30, 2004.<sup>1</sup> The United States sought and received relief from the stay so that it could collect on its debt through liquidation of the collateral.<sup>2</sup> The farmland was sold to Fairbanks Investors at a foreclosure sale. The Brasiers' son, Raymond, bought the farmland from Fairbanks Investors so his parents could stay and continue to make their home on the family farm.

Fairbanks Investors brought this suit initially to obtain "rents" for storage of the equipment on its land. The USDA brought the third party action so it could foreclose upon and liquidate the personal property held as collateral, as allowed by the Order Granting Motion for Relief From Stay, which property was the subject of Fairbanks Investors' original claim.

Vander Weele Farms failed to answer, and the clerk entered default against them.<sup>3</sup> A Motion for Default, affidavit and proposed judgment are filed contemporaneously herewith to foreclose the interest of Vander Weele Farms in the property.

Fairbanks Investors stipulated to a dismissal of all its claims in this action, and the USDA in return stipulated to a dismissal of all its claims against Fairbanks Investors in this action, on or about October 19, 2006. The court entered its order in accordance with that stipulation, dismissing Fairbanks Investors as a party and the claims of the USDA as against Fairbanks

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<sup>1</sup> Bankruptcy Case No. F04-00093 DMD.

<sup>2</sup> Order Granting Motion For Relief From Stay dated June 16, 2005, Case F04-00093 DMD, Docket 122.

<sup>3</sup> Clerk's Notice, Docket 14.

Investors on October 20, 2006.<sup>4</sup>

Thereafter, the remaining parties sought to negotiate the marshaling and turnover of the collateral pursuant to the terms of the security agreement. Eventually, the collateral was turned over on May 17, 2007. A sale of most of the remaining collateral was held on May 26, 2007. The net proceeds of the sale were applied to the Brasier's loan. At the conclusion of the sale, and upon the application of these final proceeds, all of the collateral for the Brasier's loan from USDA have been accounted for and liquidated, with the proceeds being applied to the loan.<sup>5</sup> The unpaid balance of the loan<sup>6</sup> was discharged in the Brasier's bankruptcy case as a result of the discharge of the Brasiers on December 20, 2004. The USDA has not completely closed the loan file because the Bankruptcy Trustee continues to liquidate other assets, and the USDA may receive some portion of those assets upon final distribution. However, the collateral which was the subject of this lawsuit has been accounted for and liquidated.

Based upon the foregoing, the USDA respectfully requests that the court enter an order dismissing the remaining cause(s) of action against the Brasiers. An appropriate order is lodged herewith.

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<sup>4</sup> Order for Dismissal, Docket 25.

<sup>5</sup> One item, an Oliver 5 bottom plow, which was scrapped prior to the sale, was sold for \$150 on July 25, 2007.

<sup>6</sup> According to the records of the USDA Farm Service Agency, the unpaid balance at June 30, 2007, is \$684,300.68.

RESPECTFULLY SUBMITTED on July 26, 2007.

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2007,  
a copy of the foregoing **Status Report** was served  
electronically on Barry W. Jackson and by  
U. S. Mail on:

John J. Burns  
Borgeson & Burns  
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Fairbanks, AK 99701

Vander Weele Farms  
P O Box 461  
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s/ Daniel R. Cooper, Jr.